

The Honorable Robert S Lasnik

JAMES MCDONALD
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In Pro Per

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re:) NO.: C10-1952RSL
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)
JAMES MCDONALD) Plaintiff)
)
 v)
)
ONEWEST BANK, FSB, et al.,)
)
Defendants.)
)
----- Motion for Leave to File Supplemental
Information Not Available Before Response
Date for Def. Motion for Summary Judgment
and Def. Motion for Protection Order
Noting Date: June 10, 2011

I. Introduction

COMES NOW, Plaintiff James McDonald and Moves this Honorable Court for leave to file supplemental information not available to Plaintiff prior to the Response Date of May 9th, 2011 for the Defendants' Motion for Summary Judgment and the response date of May 23rd, 2011 for Defendants' Motion for Protection Order. It should be noted that Plaintiff responded to Defendants' Motion for Protection Order on May 22nd, 2011 as the ECF system was shut down for maintenance on May 23rd, 2011.

Plaintiff files this motion under Federal Civil Rules of Procedure 15(d), "On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented."

II. Evidence Relied Upon

1. Defendants Motion for Summary Judgment (Docket #49)
 2. Declaration of Charles Boyle in Support of Motion for Summary Judgment (Docket #49)
 3. Custodial Agreement between Defendant OneWest, Freddie Mac and Deutsche Bank Trust Company (Docket #49, Exhibit 8)
 4. Plaintiff's Response to Defendants Motion for Summary Judgment (Docket #55)
 5. Defendants Motion for Protection Order (Docket #58)
 6. Plaintiff's Response to Defendants Motion for Protection Order (Docket #59)

7. Letter from Deutsche Bank Trust Company (Exhibit 1)
 8. Declaration of James McDonald in Support of Motion for Leave to File Supplemental Information
 9. Administrative Subpoena Deuces Tecum to Deutsche Bank Trust Company (Exhibit 2)

III. Facts

1. Plaintiff Responded to Defendants Motion for Summary Judgment on or about May 9th, 2011.
 2. Plaintiff sent an Administrative Subpoena Deus Tecum to Deutsche Bank Trust Company (hereafter DBTC) on May 13, 2011 (Declaration of James McDonald)
 3. DBTC received the Subpoena Deus Tecum on May 16th, 2011
 4. Plaintiff Responded to Defendants Motion for Protection Order on May 22nd, 2011.
 5. DBTC sent a response to Plaintiff on May 20th, 2011 which Plaintiff received on May 23rd, 2011.
 6. On Page 1, Paragraph 3 of Exhibit 1, DBTC communicated to Plaintiff, “Please also note that DBNTC acted as the Custodian for several **trusts, of which these loans were a part of**,” (emphasis added).
 7. On Page 1 of Exhibit 1 within the table at the bottom of the page, DBTC identifies Freddie Mac as a servicer, not as an owner of the Note in question.
 8. On Page 3 of Exhibit 1 at the top right of the page the Note in question is identified as being in Subpool IN070227. A subpool is a group of loans held within a larger pool that is owned by a trust.

IV. Arguments Presented

1. Freddie Mac is not the owner of the Note in question as sworn under the penalty of perjury by Charles Boyle (Docket #49). As Item III.6-8 above show, Freddie Mac is indeed not the owner of the Note in question and the actual owner, if any, has yet to be identified. Therefore Defendant OneWest has no standing as the Owner of the Note as they claimed to be in the Appointment of Successor Trustee (Docket #1, Exhibit F). Defendant OneWest also lacks standing as the servicer for Freddie Mac as owner of the Note as the evidence above shows Freddie Mac is not the owner.
 2. It appears to Plaintiff that Charles Boyd of OneWest Bank provided false testimony under the penalty of perjury to this Honorable Court as Plaintiff alleged in his Response to Defendants Motion for Summary Judgment and the communication from DBTC greatly supports that allegation as fact.
 3. On the bottom of Page 4 of the communication from DBTC it shows that documents were sent to OneWest Bank, though it is unclear as to what was actually sent, but only released for "servicing". The release does not transfer holder status to OneWest Bank as the document

custodian was still holding it in benefit of another party as shown in the Custodial Agreement (Docket #49, Exhibit 8).

4. **Defendants Claim that having possession of the Note gives it the ability to execute a non-judicial foreclosure is false.** Now that a subpool has been identified there is explicitly clear evidence that Freddie Mac indeed sold the note. While currently unidentified, there is yet another party with a potential claim of ownership and holder status to the Note in question. Therefore the Defendants Motion for Summary Judgment cannot be granted per RCW 62A.3-309 which states the Court cannot rule in favor of an entity if another entity may have a similar claim or standing in the financial instrument. It is quite evident that OneWest does not have any claim or standing as the Note was only released to it for servicing per Exhibit 1 and Docket #49, Exhibit 8, Section 2(g).

V. Conclusion and Relief Requested

Wherefore Plaintiff moves the Court to deny with prejudice the Defendants' Motion for Summary Judgment and Motion for Protection Order and follow the relief requested by Plaintiff in his responses to both motions.

/s/ James McDonald -
James McDonald
Pro Se

Certificate of Service

I hereby certify that on the day of, 11, 2011 the foregoing was electronically filed with the Clerk of the Court using the ECF system, which sent notification and therefore served the following:
Hilary R. ...

Heidi Buck
Routh Crabtree Olsen
13555 SE 36th ST Suite 300
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/s/ James McDonald -
James McDonald
Pro Se